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10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF NEVADA**

12 LYNN THOMPSON,

13 Claimant,

14 vs.

15 TESLA MOTORS, INC.; ELON MUSK;  
16 ONQGLOBAL, INC., DOES 1-50,

17 Respondents.

Case No. 3:21-cv-00238-HDM-WGC

**ONQGLOBAL, INC.’S JOINDER TO TESLA  
MOTORS, INC.’S REPLY IN SUPPORT OF  
MOTION TO STAY CASE PENDING  
COMPLETION OF ARBITRATION [ECF  
NO. 17]**

18 Defendant ONQGLOBAL, INC. (“OnQ”), by and through its undersigned counsel of  
19 record, hereby submits its Joinder to Tesla Motors, Inc.’s (“Tesla”) Reply in Support of its Motion  
20 to Stay Case Pending Completion of Arbitration [ECF No. 17] (“Reply”).

21 OnQ hereby incorporates all arguments, facts, and analysis set forth in the Reply and  
22 requests that, based on the same, these proceedings be stayed as to all parties pending completion of  
23 arbitration.

24 In addition, OnQ notes that the considerations that support a stay of these proceedings  
25 pending resolution of certain critical factual issues in the ongoing arbitration apply to Tesla and  
26 OnQ equally. A court’s exercise of its discretion to stay non-arbitrable claims pending completion  
27 of a parallel arbitration is appropriate where the arbitrable claims predominate, or where the  
28 outcome of the non-arbitrable claims will depend upon the arbitrator’s decision. *See, e.g., United*

1 *Communications Hub, Inc. v. Qwest Communications, Inc.*, 46 Fed.Appx. 412, 2002 WL 1963592  
 2 (9th Cir. Aug. 23, 2002) (citing *Simitar Entertainment, Inc. v. Silva Entertainment, Inc.*, 44  
 3 F.Supp.2d 986 (D. Minn. 1999)).

4 As noted in Tesla's Reply and in its Motion to Stay Case Pending Completion of  
 5 Arbitration (ECF No. 13, "Motion"), Thompson's Second Amended Complaint in the pending  
 6 arbitration includes a claim against both Tesla **and** OnQ for misclassification as an independent  
 7 contractor and wage and hour claims. *See, e.g.*, Motion, ECF No. 13 at 3-4, ECF No. 13-6  
 8 (Thompson's Second Amended Complaint in Arbitration).

9 The arbitrator's determination that Thompson was properly classified as an independent  
 10 contractor of OnQ will dispose of Thompson's Sarbanes-Oxley Act ("SOX") claim against OnQ in  
 11 this matter, because such claims can only arise in an employee-employer relationship. *See, e.g.*,  
 12 Reply, ECF No. 17 at 2-3; *Musin v. Honeywell International, Inc.*, 2020 WL 7321064 (D. Nev.  
 13 Dec. 11, 2020) ("The plain text of the Sarbanes-Oxley Act protects 'employees' from retaliation.")  
 14 (citing 18 U.S.C. § 1514A(a)). Other factual issues to be resolved at arbitration, including issues  
 15 relating to Thompson's performance and the appropriateness of his conduct during his time at the  
 16 Gigafactory, will bear directly on the merit of any SOX claim against either Tesla or OnQ should  
 17 this matter continue. The parties and issues significantly overlap between this proceeding and the  
 18 arbitration proceeding. *See, e.g.*, *Neal v. Asta Funding, Inc.*, 2014 WL 131770 (D. N.J. Jan. 6,  
 19 2014).

20 Other considerations relevant to the Court's consideration of a stay, including the balance  
 21 of burdens and hardships to the parties from litigating the two matters concurrently and initiating  
 22 discovery in this matter while preparing for the arbitration hearing in the other, apply equally to  
 23 OnQ and Tesla and weigh in favor of granting a stay. *See* Motion, ECF No. 13 at 2-8 (citing  
 24 *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962)); Reply, ECF No. 17 at 3-4.

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1 OnQ respectfully requests the Court stay these proceedings pending completion of  
2 arbitration.

3 Dated: October 22, 2021.

**FENNEMORE CRAIG, P.C.**

4  
5 By: /s/ Wade Beavers

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18 *Attorneys for OnQGlobal, Inc.*

**CERTIFICATE OF SERVICE**

Pursuant to F.R.C.P. 5(b), I certify that on October 22, 2021, a true and correct copy of  
**DEFENDANT ONQGLOBAL, INC.'S JOINDER TO TESLA MOTORS, INC.'S REPLY IN  
SUPPORT OF MOTION TO STAY CASE PENDING COMPLETION OF ARBITRATION**  
was transmitted electronically through the Court's e-filing electronic notice system to the attorneys  
associated with this case:

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